(3)

No. 90-906

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,

Petitioners,

v.

CITIZENS FOR THE ABATEMENT OF AIRCRAFT NOISE, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

BRIEF IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May a federal statute require that a regional airports authority agree, as a condition of obtaining a lease of federal airports, to give Members of Congress a veto over the operation of those airports, when Congress could not exercise that power directly consistent with the doctrine of separation of powers, the Bicameralism and Presentment Clauses, the Appointments Clause, and the Incompatibility Clause of the Constitution?

2. Did the courts below err in holding that this case satisfies the ripeness and standing requirements of Article III of the Constitution?

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BRIEF IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

Respondents, Citizens for the Abatement of Aircraft Noise, John W. Hechinger, Sr., and Craig H. Baab, do not oppose granting the petition for a writ of certiorari because they recognize the significance of the ruling of the Court of Appeals which held key provisions of a federal statute unconstitutional. Moreover, the case has significance beyond this statute because the scheme under review provides a blueprint that Congress could use to give itself a legislative veto over other exercises of delegated power under the Property and Spending Clauses, in circumvention of this Court's decision in *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919

(1983). Thus, although the Court of Appeals correctly found this legislative veto unconstitutional, respondents agree that an issue of this magnitude warrants this Court's review.

STATEMENT

In their petition, the Metropolitan Washington Airports Authority ("Airports Authority") and its Board of Review, accurately describe the Airports Authority's Board of Directors and the general nature of the transfer. However, because their description of the purposes and powers of the Board of Review is incomplete, respondents have included an overview of the Board of Review's authority and its legislative history, as well as a description of a key statutory provision — never mentioned in the petition — that deprives the Airports Authority of its core powers if the Board of Review is invalidated. Respondents also provide a more complete description of the uncontested facts that give them standing to challenge the Board of Review provisions and that make their challenge ripe for review.

A. The Board of Review

In order to obtain support for its plan to divest the federal government of managerial responsibilities over Washington National and Washington Dulles International Airports, the Secretary of Transportation appointed an advisory commission to develop proposals for transferring the airports to a state, local, or regional body. Joint Appendix in the Court of Appeals ("J.A.") at 50. After the advisory commission recommended that the two Washington-area airports be leased to a regional authority, J.A. 50-55, the Commonwealth of Virginia and the District of Columbia enacted laws authorizing the establishment of a regional authority in keeping with the advisory commission's recommendations. 1985 Va. Acts ch. 598;

D.C. Law 6-67 (1985). Like those recommendations, neither the Virginia nor the District of Columbia laws required, or even permitted, the establishment of a Board of Review that would oversee the Airports Authority's actions.

During the same time frame, the United States Senate passed a bill, at the behest of the administration, that also would have led to a complete transfer of financial and operational control over the Washington-area airports, as recommended by the advisory commission. Senate Comm. on Commerce, Science, & Transportation, Metropolitan Washington Airports Transfer Act of 1985, S. Rep. No. 193, 99th Cong., 1st Sess. 3 (1985) ("Senate Report"); 132 Cong. Rec. S4116 (daily ed. April 11, 1986). Although the primary opposition to the bill came from Senators who wanted to retain federal control over the airports, the Senate bill did not contain any type of Board of Review or any other mechanism for Congress to retain control over the airports after their transfer. Senate Report at 19-21; *Transfer of National & Dulles Airports: Hearings Before the Subcomm. on Aviation, Senate Comm. on Commerce, Science, & Transportation*, S. Hrg. 338, 99th Cong., 1st Sess. 2-3 (June 26 & July 11, 1985); 132 Cong. Rec. S4116-20 (daily ed. Apr. 11, 1986).

In the House of Representatives, many Members vigorously opposed the transfer because they wanted to retain federal control over the airports. Thus, one Representative stated: "Local residents opposed to nearby noise have, for many years, attempted to close National Airport and divert the traffic to Dulles.. . .If we transfer this airport to local control, what assurance do we have that local residents will now, all of a sudden, start supporting these improvements at National?" *Proposed Transfer of Metropolitan Washington Airports: Hearings Before Subcomm. on Aviation, House Comm. on Public Works & Transportation*, H.R. Hrg. No. 61, 99th Cong., 2d Sess. 22 (June 24 & 26, 1986) (statement of Rep. Sundquist).

In an attempt to retain federal control over the airports, the House Subcommittee on Aviation drafted several substitute bills that would have established a congressional Board of Review with the power to veto major actions taken by the Airports Authority, such as adoption of an annual budget, issuance of bonds, promulgation of regulations, and approval of development plans. J.A. 63-66, 86-88, 115-18, 133-36. While the drafts differed in the way the Board of Review members would be selected, they all required that the Board be composed of Members of Congress, with two drafts adding the Comptroller General, a congressional official, and another draft adding the chief executive officers of Virginia, Maryland, and the District of Columbia. *Id.*

In order to bolster congressional support for the administration's transfer legislation, Assistant Attorney General John R. Bolton rendered an advisory opinion on the constitutionality of the proposed Board of Review provisions. J.A. 61-69. In that opinion, Mr. Bolton concluded that a veto by a congressional Board whose members were appointed by the congressional leadership, as in all but one of the draft bills, "would plainly be legislative action that must conform to the requirements of Article I, section 7 of the Constitution: passage by both Houses and approval by the President," *citing Chadha*, 462 U.S. at 954-55. J.A. 61-63, 66-67. Moreover, according to Mr. Bolton, "since the responsibilities to be exercised by the Board are clearly operational, participation by members of Congress chosen by the leadership would violate the Incompatibility Clause and the Appointments Clause of the Constitution . . . and members of Congress could serve, if at all, only in an advisory capacity." J.A. 62-63 (quotations of constitutional provisions omitted). However, the Justice Department concluded that, "[a]lthough the issue is not free from doubt," J.A. 68, a third plan would overcome the *Chadha* bar because it would allow the congressional leadership to

nominate Members of Congress to serve on the Board of Review, but the Airports Authority would actually appoint the Members of Congress to serve in their individual capacities as representatives of airport users rather than as representatives of Congress. J.A. 67-68.

Armed with the Department of Justice's stamp of approval, the Senate added this last version of the congressional Board of Review to the transfer legislation, and then passed the amended bill, without any hearings or debate on the review board. 132 Cong. Rec. S14,862-65 (daily ed. Oct. 3, 1986). In the House floor debate, which constitutes the only recorded discussion of the Board of Review provisions, numerous Members of Congress stressed the importance of this feature of the Act. As one Member put it, the bill "provides for continued congressional control over both airports [since] Congress would retain oversight through a Board of Review made up of nine Members of Congress [who] would have the right to overturn major decisions of the airport authority . . .." 132 Cong. Rec. H11,098 (daily ed. Oct. 15, 1986) (statement of Rep. Coughlin). Another Member reiterated that the "board has been established to make sure that the Nation's interest, the congressional interest[,] was attended to in the consideration of how these two airports are operated." *Id.* at H11,103 (statement of Rep. Hoyer). These sentiments were echoed by several other Representatives, including one who stated:

> Under this plan, Congress retains enough control of the airports to deal with any unseen pitfalls resulting from this transfer of authority . . ..We are getting our cake and eating it too.. . .The beauty of the deal is that Congress retains its control without spending a dime.

Id. at H11,100 (statement of Rep. Smith); *accord id.* at

H11,098 (statement of Rep. Lehman); *id.* at H11,104 (statement of Rep. Smith); *id.* (statement of Rep. Dickinson); *id.* at H11,105 (statement of Rep. Conte); *id.* at H11,106 (statement of Rep. Hammerschmidt).

As enacted into law, the Metropolitan Washington Airports Act of 1986 ("Transfer Act") requires that the Board of Directors of the Airports Authority establish, as a condition of the transfer of the airports, a nine-member Board of Review composed exclusively of Members of Congress. 49 U.S.C. App. § 2456(f)(1). The Transfer Act specifies that, aside from one Member of Congress chosen alternately from the House and the Senate, the Board must consist of two Members from each of the four congressional committees with principal jurisdiction over the Washington-area airports — the House Public Works and Transportation Committee, the House Appropriations Committee, the Senate Commerce, Science, and Transportation Committee, and the Senate Appropriations Committee. *Id.* While the Transfer Act states that these Members of Congress will serve "in their individual capacities, as representatives of the users of the Metropolitan Washington Airports," *id.*, they must all be Members of Congress and they cannot be Representatives or Senators from Maryland or Virginia or the District of Columbia Delegate. *Id.* Moreover, the Airports Authority is not free to select anyone even from the eligible Members of Congress, but is limited to the names submitted by the Speaker of the House and the President *pro tempore* of the Senate, who are not required to, and, in practice, have sometimes failed to, submit more names than the number of vacant slots. *Id.*; J.A. 143-44, 148-49.[1]

[1]While the Transfer Act is silent with respect to the power to remove Board of Review members, the Airports Authority has claimed the power to remove members for cause. J.A. 151-52. However, any replacement appointments must be nominated by the congressional leadership and must serve on the same congressional committees as the removed members.

The Board of Review has the power to veto the Airports Authority's core actions. 49 U.S.C. App. § 2456(f)(4). Thus, the Airports Authority cannot authorize the issuance of bonds, appoint a chief executive officer, adopt an annual budget, approve development or land acquisition plans, or change its regulations without first submitting its proposed action to the Board of Review for consideration and an opportunity to veto the action. *Id.*

Although the Transfer Act contains a general severability clause, § 2460, Congress added a special clause further assuring congressional control over the airports. That clause provides that, if the Board of Review "is unable to carry out its functions under this subchapter by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required . . . to be submitted to the Board of Review." § 2456(h). This provision underscores Congress's intent to retain control over the airports either through the Board of Review or by rendering the Airports Authority essentially powerless to perform its tasks without further congressional action.

After the enactment of the Transfer Act, the Secretary of Transportation and the Airports Authority entered into a lease, which requires the Airports Authority to establish, and to be bound by the veto decisions of, a Board of Review that meets the Transfer Act's specifications. App. E at 175a-78a. The Airports Authority then adopted bylaws incorporating the Board of Review provisions contained in both the Transfer Act and the lease. App. E at 151a-54a.

It was not until after the Transfer Act had been enacted and the lease had been signed that Virginia and the District of Columbia amended their previously enacted airports authority laws to add any reference to a Board of Review. In compliance with the conditions of the federal Transfer Act and the federal lease,

these amendments give the Airports Authority the power "to establish a board of review," although they do not require it to do so. More importantly, these laws do not describe the composition of the Board, let alone mandate that its members all be Members of Congress. 1987 Va. Acts ch. 665, § 5.A.5; D.C. Law 7-18, § 3(c)(2) (1987).

As this discussion demonstrates, the Transfer Act does not merely "describe[ ]" the Board of Review's composition and authority or "suggest[ ]," "encourage," or "request[ ]" the Airports Authority to create such an entity, as stated in the petition at 14. Rather, the Act prescribes the precise composition and powers that the Board of Review must have, and it, along with the federal lease, mandate that the Airports Authority create, and be subservient to, such a Board of Review in order to receive, and have any power to operate, National and Dulles Airports.

B. Respondents' Interests and Injuries

Respondent Citizens for the Abatement of Aircraft Noise, Inc. ("CAAN"), is a nonprofit membership organization of individuals and citizens' groups who wish to minimize the noise, safety, and environmental effects of air traffic at National Airport. J.A. 157, 160-63. Most of its members, as well as the two individual respondents, live under National Airport's flight path, and their lives are regularly disrupted by aircraft noise, vibrations, traffic congestion, and pollution from air traffic at National Airport. J.A. 158; 164-65; 167-68.

In March of 1988, over CAAN's opposition, J.A. 177-80, the Airports Authority approved a master plan for National Airport, which provides for expanding the airport's capacity to handle night-time flights, additional day-time air carrier operations, and increased numbers of passengers and automobiles. J.A. 158, 170-71, 297, 314, 317-22, 328, 389-90.

Although the Board of Review had previously exercised its veto to prevent the use of the Dulles Access Road for car pool commuter traffic, J.A. 153-54, the Board voted not to veto the master plan. J.A. 297. The Airports Authority has since begun to implement the master plan by issuing several bond series to finance the expansion and by entering into construction contracts, which are underway. J.A. 20-21, 158-59.

As a practical matter, the Airports Authority can implement its master plan only if it has the power to raise and spend substantial funds for this purpose. However, if respondents are successful in this lawsuit, the Board of Review will be unable to exercise its veto power, and, because of the special severability clause, § 2456(h), the Airports Authority will lose its authority to issue bonds, to adopt an annual budget, and to adopt or revise a master plan, all of which are necessary for expansion of National Airport.

On cross-motions for summary judgment, the District Court rejected petitioners' justiciability claims. App. C at 29a. With respect to ripeness, it ruled that "this case is as ripe as it ever will be," since "the particular manner in which the veto power is exercised will [not] affect the constitutionality *vel non* of the body that exercises it." App. C at 38a. Moreover, the Court stressed, "[t]his is also not a situation where the possibility of a veto is abstract or ephemeral, for the Board of Review has already acted to disapprove one resolution passed by the Board of Directors." *Id.*

The District Court also held that respondents had standing to bring this challenge because they asserted, without challenge, that "they are harmed by noise, air pollution and the safety problems associated with flights to and from National." *Id.* at 41a. The Court found that these injuries are fairly traceable to the master plan, since "an increase in both passengers and flights could *not* occur without the significant

improvements contemplated by the Plan." *Id.* (emphasis in original). Moreover, the relief sought would redress respondents' injuries since "if the Authority may not issue bonds or adopt a budget, continued construction at National would cease, the additional capacity otherwise possible would be halted, and plaintiffs' asserted injuries would be averted." *Id.* at 41a-42a. Relying on *Buckley v. Valeo*, 424 U.S. 1, 117 (1976), which concluded that "[p]arty litigants with sufficient concrete interests at stake may have standing to raise constitutional questions of separation of powers with respect to an agency designated to adjudicate their rights," the District Court found that respondents also had standing because the Board of Review, which excludes local representation, diminishes their influence over airports matters *Id.* at 42a.

On appeal, the United States, which intervened pursuant to 28 U.S.C. § 2403(a), agreed with respondents and the District Court that this case is justiciable, although it supported petitioners on the merits. The Airports Authority urged the Court of Appeals to decide the merits, Appellees' Brief at 12 n.8, although it reiterated some of its justiciability arguments in a cursory fashion in a footnote. *Id.* at 15-16 n. 9. In order to satisfy itself that it had jurisdiction over this case, the Court of Appeals briefly reviewed and summarily rejected the justiciability contentions that had been made in the District Court. App. A at 9a.

REASONS FOR GRANTING THE WRIT AND AFFIRMING THE JUDGMENT BELOW

Although the Court of Appeals correctly decided that the Board of Review provisions are unconstitutional, the first question presented warrants review by this Court because it raises significant separation of powers issues. In contrast, the second question raises no significant legal issues, but merely involves the straightforward application of existing precedent to the uncontested facts of this case. Although the rejection of the justiciability arguments by all four judges who have heard this case is unassailable, respondents recognize that, to the extent that the justiciability claims are based on Article III, the Court must satisfy itself that a case or controversy is presented.

A. This case presents a significant constitutional issue, not because the Court of Appeals "federalized" separation of powers principles, as the petition asserts at 10-14, but rather because it invalidated an attempt by Congress to recapture the legislative veto and to assign executive functions to itself. Indeed, the Transfer Act's Board of Review provisions provide a roadmap that would, if upheld, enable Congress to evade constitutional limitations on the way in which it may exercise its authority whenever federal property or money is the subject of legislation.

Since the Board of Review provisions authorize Members of Congress to participate in the execution of federal power by means other than passing laws, the most pertinent authorities are this Court's decisions in *Chadha, supra; Springer v. Government of the Philippine Islands*, 277 U.S. 189 (1928); and *Bowsher v. Synar*, 478 U.S. 714 (1986). Nonetheless, the petition makes absolutely no mention of *Chadha and Springer*, and ignores those aspects of Bowsher that impose limitations on Congress's ability to carry out executive functions.

In *Chadha*, this Court held that a one-House legislative veto violated the Bicameralism and Presentment Clauses and that Congress must comply with these requirements whenever it takes actions that are legislative in character and effect, *i.e.*, "that have the purpose and effect of altering the legal rights, duties, and relations of persons . . . outside the Legislative

Branch." 462 U.S. at 952. Moreover, once Congress delegates a legislative power to the Executive Branch, it "must abide by its delegation of authority until that delegation is legislatively altered or revoked." *Id.* at 955.

The corollary principle, established in *Springer* and applied in *Bowsher*, is that the legislature "cannot engraft executive duties upon a legislative office." 277 U.S. at 202. In *Springer*, which in many respects is the most analogous case to this one, this Court held that members of a territorial legislature could not serve on committees that had the authority to vote the government-owned stock of a government corporation and to appoint the executive officials who ran the corporation. Because these functions are not in aid of any legislative functions, but instead are executive in nature, the Court held that legislative officials could not constitutionally perform them. *Id.* Similarly, in *Bowsher*, this Court barred a congressional official from carrying out executive functions.

Under these decisions, the Constitution imposes affirmative limitations on the method by which Congress can affect legal rights. Congress may pass a law pursuant to the constitutional lawmaking process, but it may not retain veto powers over functions that it has delegated to another entity. As the Court stated in *Bowsher*, "once Congress makes its choices in enacting legislation, its participation ends." 478 U.S. at 733. Indeed, in *Mistretta v. United States*, 488 U.S. 361 (1989), and *Morrison v. Olson*, 487 U.S. 654 (1988), on which petitioners principally rely, Congress abided by these limitations and simply passed laws without making any effort to control their implementation.

There has never been any dispute over whether Congress could have given itself or any group of its Members a veto power over airports decisions as long as the Federal Aviation Administration operated the airports; *Chadha*, *Springer*, and

Bowsher clearly would have prohibited such direct congressional intrusion into executive powers. There is also general agreement that Congress could not, under this line of cases, directly create a congressional body that has the power to veto major actions of the Airports Authority. The only issue is whether these constitutional prohibitions apply when, instead of directly establishing the congressional veto power, Congress required the Airports Authority to establish the Board of Review and to be bound by its veto decisions as a condition of leasing the federal airports and of exercising the other powers set forth in the Transfer Act.

The petition asserts that federal separation of powers principles do not constrain the Board of Review because (1) it is a state-created entity, and (2) Congress may give itself the power to perform executive functions when it does so as a condition to the grant of federal property or money to a state or local entity. These contentions are plainly inconsistent with the rationale and results of prior separation of powers rulings of this Court.

The Court of Appeals correctly concluded that "it is wholly unrealistic to view the Board of Review as solely a creature of state law immune to separation-of-powers scrutiny." App. A at 12a. Indeed, as the Court recognized, "the 'practical consequences' of the current arrangement are to maintain in place by federal law a body composed exclusively of members of Congress that exercises operational control over the airports." *Id.*

After all, it is the Transfer Act that mandates the creation of the Board of Review and that prescribes its congressional membership and its veto authority, and it is the federal lease that requires the Airports Authority to make itself subservient to the Board of Review as a condition of receiving the Washington area airports. The Airports Authority bylaws

merely parrot the federal statute and lease, and the Virginia and District of Columbia laws do no more than authorize the creation of a board of review, without requiring the Airports Authority to do so, and without specifying its congressional membership or prescribing its veto authority. In all these respects, the Board of Review is a creation of federal, not state law.

The terms of the Transfer Act make it clear that the purpose of imposing the Board of Review on the Airports Authority was to retain congressional control over the airports after their transfer. That is why the Board must be composed of nine Members of Congress, eight of whom must serve on the committees with oversight over the airports, and all of whom must be nominated by the congressional leadership. That is also why the Board has the power to veto the core powers that the Airports Authority must have to operate the airports effectively. Most importantly, that is why Congress added the special severability clause that guts the Airports Authority's powers if the Board of Review is precluded from exercising its veto.

If there were any doubt that the Board of Review is a congressionally mandated device for retaining congressional control over the airports, the floor debate on that provision points unequivocally to Congress's true intent — to make sure that "the congressional interest [is] attended to in the consideration of how these two airports are operated." 132 Cong. Rec. at H11,103 (statement of Rep. Hoyer). It can be stated no more succinctly than the words of Representative Smith: "We are getting our cake and eating it too.. . . The beauty of the deal is that Congress retains its control without spending a dime." *Id.* at H1,100.

For all of these reasons, the Court of Appeals correctly held that the power of the Board of Review over the Airports

Authority is a retained federal power that must be exercised in accordance with the principle of separation of powers. Accordingly, Congress and its Members are barred from exercising that power without going through the constitutional lawmaking process, which the Board of Review admittedly does not follow.

Although the Court of Appeals held that the Board of Review violates the doctrine of separation of powers, there are alternative grounds for affirming the ruling below. Thus, the Members of Congress charged with carrying out this retained federal power are "exercising significant authority pursuant to the laws of the United States," *Buckley v. Valeo*, 424 U.S. 1, 126 (1976), as the Court of Appeals observed. App. A at 10a, 15a-16a. As such, they must be appointed in accordance with the Appointments Clause, which authorizes the President, the courts, and department heads, but not Congress or regional bodies, to make such appointments. U.S. Const. Art. II, § 2, cl. 2. In addition, under the Incompatibility Clause, Art. I, § 6, cl. 2, Members of Congress may not hold any office charged with performing such functions. Both the Appointments Clause and the Incompatibility Clause establish affirmative limitations on who can oversee the Airports Authority's actions, which reinforce the limitations imposed on Congress by the bicameralism and presentment requirements and the doctrine of separation of powers.

To avoid these constitutional limitations, petitioners contend that Congress can give itself a veto power simply by making it a condition to a transfer of federal property. Thus, petitioners rely on *South Dakota v. Dole*, 483 U.S. 203 (1987), which held, that even if Congress could not establish a national minimum drinking age, it could require the states to raise their drinking ages as a condition of receiving federal funds. However, as the Court of Appeals held, Congress's Spending and Property Clause powers do not permit it "to circumvent

the functional constraints placed on it by the Constitution." App. A at 14a. In *Dole*, the problem was the lack of direct congressional power under Article I, section 8, a problem that was cured by using Congress's admitted power under the Spending Clause. Here, the problem is that the Constitution imposes affirmative limitations on the method by which Congress can affect legal rights and duties through the Bicameralism and Presentment Clauses, the doctrine of separation of powers, the Appointments Clause, and the Incompatibility Clause. Congress cannot evade these limitations by asking other entities to agree to be bound by Congress's extra-constitutional lawmaking as a condition of obtaining federal property or funds.

Indeed, if Congress can require the establishment of this Board of Review as a condition of the transfer of the airports, then it could also have required the Airports Authority to submit its actions to the House of Representatives for a one-House veto. Similarly, if this power is upheld, Congress could acquire a veto over the operation of the national parks or the veterans hospitals by transferring those properties to local governments or private entities. Moreover, under the Spending Clause, Congress could control the operation of numerous federal programs, such as those run by the National Endowment for the Arts or the Legal Services Corporation, by transferring them to the states or private entities, which would agree to be bound by the judgments of a congressional committee. In essence, the Board of Review provisions provide a blueprint for evading the structural limits imposed on Congress by the Constitution and reinforced by this Court's rulings in *Chadha*, *Springer*, and *Bowsher*.

B. The justiciability issues raised by petitioners in their second question presented, and discussed in less than one page in the petition, do not warrant this Court's review, except

as necessary for the Court to satisfy itself that there is a case or controversy meeting the requirements of Article III. Both the District Court and the Court of Appeals rejected these arguments below, and in the Court of Appeals, petitioners urged the Court to decide the merits and relegated their justiciability defense to a footnote. Moreover, the United States, which is a frequent proponent of ripeness and standing arguments, concluded, after extensive discussion, that this challenge is ripe and that respondents have standing to bring it.

This case is ripe for review because it raises purely legal questions based on well-developed Supreme Court precedent, which will not be affected by the manner in which the veto is exercised in the future. Indeed, in the wake of *Chadha*, this Court has not waited for a legislative veto to be exercised before reviewing its effect on legislation containing it. *See Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 682-83 & n.3 (1987). Moreover, the Board of Review's veto authority is not a dormant power since it has been used to block one proposal by the Airports Authority. While the veto power has not been exercised to respondents' specific detriment, its existence has inevitably shaped the Airports Authority's actions and tainted the process by which the master plan was adopted.[2]

Respondents also have standing to challenge the Board of Review. Petitioners have never disputed that respondents are injured by noise, air pollution, and safety problems associated with flights to and from National Airport. There is also no dispute that, under the master plan, there will be increases in the number of passengers using National Airport and in the

[2]It should be noted that a person who objected to an exercised veto would probably not meet the redressability aspects of standing because a successful challenge would deprive the Airports Authority of the power to undertake the vetoed action. *See* 49 U.S.C. App. § 2456(h)

number of day-time air carrier operations, J.A. 170-71, 314, 317-22, 328, and there will be several larger gates that can accommodate wide-bodied jets, which comply with the night-time noise restrictions, but which currently cannot use National Airport's facilities. J.A. 297, 389-90.

Invalidating the Board of Review will make it impossible for the Airports Authority to undertake the actions that are subject to the Board's veto power and that are necessary to expand the airport facilities in keeping with the master plan. As a result, respondents will be spared the additional noise that would otherwise be caused by the increase in day-time air carrier operations and the traffic congestion and air pollution that would result from the increase in the number of passengers using National Airport. In addition, without expansion of the airport facilities, respondents will not have to endure night-time noise from the wide-bodied jets that cannot fit into the existing gates at the Airport. For these reasons, respondents' injuries can be fairly traced to the master plan, and their injuries will be redressed by a ruling in their favor.

CONCLUSION

For the reasons set forth above, the Court should grant the petition for a writ of certiorari and then affirm the judgment below.

Respectfully submitted,

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